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Plaintiff pro se

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 CLERK, U.S. DISTRICT COURT  
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 DISTRICT OF UTAH  
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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

ROBERT S. TREFF

(Full Name)

PLAINTIFF

VS.

CIVIL RIGHTS COMPLAINT

(42 U.S.C §1983, §1985)

DR. RICHARD GARDEN MEDICAL DIRECTOR  
Utah State Prison; DALE SCHIMMELBOERN  
(USP) medical administrator  
USP, KENNETH B. BASS Physician Assistant  
USP, JOSEPH W. BASS Physician Assistant  
BRUCE C. BROWN, DOCTOR (USP) Physician Assistant  
Physician Assistant U.S.P., Utah State Prison, 3rd USP  
JOHN & JANE DOE #1-410 Employees of USP  
Peter Rosser, Certified Nurse Practitioner U.S.P. - Dr. Smith  
(USP) U.S.P. - University of Utah  
Dr. Virginia & Corey, U.S.P. - All American City  
individuals with racial and personal caperities.

Judge Ted Stewart

DECK TYPE: Civil

DATE STAMP: 10/26/2004 @ 13:25:20

CASE NUMBER: 2:04CV00996 TS

DEFENDANTS

A. JURISDICTION

1. Jurisdiction is proper in this court according to:

- a. ☒ 42 U.S.C. §1983 &  
 b. ☒ 42 U.S.C. §1985  
 c. ☐ Other (Please Specify) \_\_\_\_\_

*plaintiff state claims*

2. NAME OF PLAINTIFF

IS A CITIZEN OF THE STATE OF

ROBERT S. TREFF  
UTAH

PRESENT MAILING ADDRESS:

P.O. Box 250  
DRAPER, Utah 84020

IS EMPLOYED AS Doctor ~~Physician Assistant~~ at USP  
(Position and Title if Any) (Organization)

Was the defendant acting under the authority or color of state law at the time these claims occurred?

YES ☒ NO ☐. If your answer is "YES" briefly explain.

Defendant Tubbs is employed at the Utah State Prison by the Utah Department of Corrections, it is an employee of the State of Utah.

6.

NAME OF FOURTH DEFENDANT JOSEPH COOMBS  
(If applicable)

IS A CITIZEN OF SALT LAKE CITY, UTAH  
(city and State)

IS EMPLOYED AS Physician Assistant at USP  
(Position and Title if Any) (Organization)

Was the defendant acting under the authority or color of state law at the time these claims occurred?

YES ☒ NO ☐. If your answer is "YES" briefly explain.

Defendant ~~Tubbs~~ Coombs is employed at the Utah State Prison by the Utah Department of Corrections. He is an employee of the State of Utah.

(Use additional sheets of paper if necessary.) See additional sheet.

#### B. NATURE OF CASE

1. Why are you bringing this case to court? Please explain the circumstances that led to the problem. I have worked for 3 years through defendant's medical appointments to have my pain Alleviated once and for all.

## DEFENDANTS (CONT.)

7. DEFENDANT CRAIG ARBUTT is a citizen of Salt Lake City, Utah and employed as a Physician Assistant at the Utah State Prison (USP)  
PAUL ROSSER
8. DEFENDANT ~~DAVID ROSSER~~ is a citizen of Salt Lake City, Utah and employed as a physician Assistant at the USP.  
ECFNT
9. DEFENDANT John and Jane Does #1-#10 are citizens of Salt Lake City, Utah and employed as a ~~Employees~~ of the medical Department of the Utah State Prison.
10. DEFENDANT Raymond Merrill is a citizen of Salt Lake City, Utah and employed as a physician assistant of the medical Department of the Utah State Prison.
- ~~All above Defendants acted under color of state law because they were employed by the Utah Department of Corrections, a department within the state of Utah.~~
11. BRUCE C. Swarthorn is a citizen of Cannon, Utah and employed as a doctor at the Central Utah Correctional Facility (CUCF)
- All ~~above~~ Defendants acted under color of state law because they were employed by the Utah Department of Corrections, a department of the state of Utah.
12. Dr. SKUDAR <sup>MATT</sup> (sic) is a citizen of Salt Lake City, Utah and employed as a doctor at the University of Utah. He is acting under color of state law as an employee of State of Utah public institution.
13. University of Utah is a medical facility within the state of Utah. It is a <sup>part of</sup> State of Utah public institution and must act under color of state law.

14. Defendant Virginia Carey is a citizen of Salt Lake City, Utah. She is employed as a doctor by the University of Utah. As an employee of the University of Utah she was acting under color of State law since the University of Utah is a public institution of State of Utah.  
State

### C. CAUSE OF ACTION

1. I allege that my constitutional rights, privileges or immunities have been violated and that the following facts form the basis for my allegations: (If necessary you may attach additional pages)

- a. (1) Count I: CRUEL AND UNUSUAL PUNISHMENT  
8th Amendment to U.S. Constitution  
Federal Tort Law Utah Constitution Art I Sec 9
- (2) Supporting Facts: (Describe exactly what each defendant did or did not do. State the facts clearly in your own words without citing legal authority or arguments.)  
please see Attached paper

And documents

- b. (1) Count II: 1st Amendment to U.S. Constitution  
Regulation for Seeking Redress through Government  
Utah St. Const. Art I. Secs. 1, 3, 7

- (2) Supporting Facts: please see Attached paper  
And documents

pn 1

# STATEMENT OF FACTS (990-06-31170)

On 9-9-99 ~~At the time~~ I Filed a Level II grievance. I had paid for refills through that period but had not gotten my 2 more months worth (7-99 and 8-99) of Piroxicam and Acetaminophen. Also the continual pain of my neck (degenerative disk) and accompanying headaches every day. On August 18, 1999 I received the Level II grievance back denying the remedies. On August 23, 1999 I Filed the Level III grievance stating "my neck is in constant pain, my headaches continuing... I should not have to pay again for refills that never came." Informed by medical staff that my neck was deemed a "chronic" health problem. Pursuant to information from another inmate who was also ~~had~~ had a "chronic" health problem as deemed by U.S.P. medical staff I wrote to Dr. <sup>Richard</sup> ~~Robert~~ and requested refunds for health care and medication deemed "chronic" regarding my neck and the coinciding corresponding headaches. He denied such. Doug Hansen, an inmate living in my section wrote me note on 8-24-99 verifying he had his cost waived because he was "chronic". On 9-27-99 I again was notified by Administrative Law Judge R. Spencer Robinson of my Level III grievance that he would review the info before rendering his decision. On 10-2-99 my HCR (Health care Request form) at an additional \$4.00 was docketed and my account debited. I stated "Neck pain daily and continuous... stronger medication requested. Headaches occurring quite often..." Level II grievance response 990332274/m. 04-17 stated that I had received medication refills for which I had paid for which I most certainly did not. On 11-3-99 in great pain for the last 12 months, I submitted another HCR (as instructed) ~~that~~ "Bad headache continue" "my neck is getting worse, movement causes pain and friction sounds this has become a chronic situation." I wrote to Inmate Medical Issues in October of 1999. In January 2000 I received their response. On 1-25-00 I sent in HCR. It stated "Neck continues to chronically be in pain daily. It feels worse than before, more stiffer, lower neck and temples now hurting as well." On or about 2-8-00 received letter Inmate Medical Issues. It stated "We have talked to the medical director. Let us know if your care improves." (emphasis added) "The policy about follow-up charges is the following: If the visit is initiated by the clinical staff you will not be charged. If the visit is initiated by you - there will be a charge. If you think you have been charged incorrectly, send a memo to the co-pay department we will take the problem of chronic illness and the exorbitant cost to the inmate (especially if they can't work) to the D.O.C. and governor's office."

On 1-31-2000 I was charged \$4<sup>00</sup> + \$2<sup>50</sup> in prescriptions. On 2-14-2000 I was charged .50 for prescriptions. On 2-24-00 I received an unsigned response to my letter regarding refill problems. I did not wish to be seen again (Again another \$4<sup>50</sup>) for the continuing problem of neck and headaches that at least 5 previous <sup>medical</sup> visits did not cure. I did request that I receive the refills I already paid for (above) via the ~~ref~~ prescription. Filed grievance Level I on this matter 3-10-2000 #9908-34-686 PS. Note was sent to Dr. Coombs. On 4-6-2000 received letter from Invet-Infirmiry in response to my 3-31-2000 letter to Dr. Richard Gordon. Co-payment and chronic care meds. She stated "I am sorry, but we cannot make exceptions on our policy of chronic care meds and medical co-pays." (see Doug Hansen "chronic care" previous page). I was not asking for an exception in my letter to Defendant Gordon. I ~~was~~ asked only to be treated, as a "chronic" situation, the same as inmate Doug Hansen and other inmates with similarly "chronic" situations. On 4-20-2000 submitted another HCR. It stated "Neck pain continues, headaches continue... Can I get stronger medication? Neck surgery? Longer prescription periods? Taken to VA Hospital?" Informed by Pt Hyatt that "yes," I "could have neck surgery," but he asked me to try some neck exercises first, along with medication. He said "Neck surgery will take away pain, but would also decrease mobility". I told him I would at 2 hrs, continue to follow medical instructions as long as it led to a cessation of the pain once and for all. I continued the medication, did the neck exercises. Pt Hyatt confirmed that I have a "chronic" neck condition. I wrote the Disability Law Center on 5-20-2000 regarding the situation. On 7-19-2000 I wrote to Richard Gordon (Again) regarding the medical co-payment neck condition "chronic", and request for surgery on neck, MRI, CAT scan, complete full physical examination. On 7-27-00 I received the response from "I" Co-pay Administrator. It indicated a new policy that "If you (an inmate) incur leaving a medical debt it will be deducted if you return to prison." Thus, similarly situated prisoners are not being treated the same as I in regard to this policy. I have to pay for my medical bills, they do not if they leave and don't return to prison."

On 3-08-01 submitted another HCR (Again for continuing neck <sup>headache</sup> problem) and now shoulder pain. It stated "Severe, continued pain in neck, shoulders, arms, head for 3 days in a row, now twice (3 days in a row) in the last 2 weeks."



"(Continued headaches), cannot do neck exercises without continued extreme pain." "Dizziness bouts, Lump in throat for the last week, Difficulty breathing at times at night." On 3-12-01 Defendant Foster saw me at Timpanogas. I explained neck problems and headaches. Requested surgery for neck. He refused. He wrote "Im (inmate) C/O Back, Neck and shoulder pain that has been present for several months. Im (inmate) states He has continued H/A's (Headaches), Abnormal musculoskeletal Exam. Im demonstrates decreased ROM AT THE NECK AND SHOULDERS. Im HAS PAIN TENDERNESS TO R/L SHOULDERS." (emphasis added) On 4-3-01 Saw by Defendant TUBBS. He writes "Degenerative Disc Disease of neck "Chronic" (Am charged \$400 for this Repeat diagnosis) "Chronic DSD of C5/C6" and a "Cervical Collar was given" On 4-10-01 seen again by Defendant TUBBS who wrote "A SHOULDER JOINT PAIN A/C JOINT TENDERNESS... IT'S A PAIN OTHER... ONCE IT'S MILD WILL NOT TREAT PER POLICY (WHAT IS ONCE IT'S MILD??). I requested surgery on neck and shoulder. He stated to me "you (inmate) cant have shoulder surgery." I asked why not? He said "Because you're not John Elway and you don't have a \$50,000,000 Arm." I said "You are denying me surgery because I'm not John Elway or my arm is not important?" He said "that is not a life threatening situation." He then ordered a steroid injection for shoulder. On 5-7-01 saw Defendant Combs at Wasatch Infirmary. He writes has "NSAIDs". What does this mean? He wrote also "Joint pain. AC L shoulder, sterily prepped and injected w 1/2 cc Kenvalog in Fanning motion and 1/2 cc Lidocain. Had good results, Encouraged to not overuse this shoulder and to RTC in 2-3 weeks if not better. Arthritis w inflammation Musculoskeletal system complaint L shoulder pain worse with stepping on it and with some ROM, C/O Lifting." (emphasis added) Shoulders left T/P over AC Joint w post cross arm test. On 1-24-02 Shipped to CULF. On 2-4-2002 saw Defendant Burnham. He wrote "multiple system complaint... Feldene for chronic neck pain and shoulder pain. Wants x Rays and surgery for neck. This is "chronic" Just came down from Draper a few days ago." Defendant Burnham refused surgery to neck and shoulders because "It's not within the budget" and because "(I) you just came down here (CULF) recently". I asked "what does that have to do with it?" He said "I'm not often my to get surgeries and medical care they can't get up north, down here." Inmate Thomas Hermann (sic) received surgery on his shoulder at L.A. V.S.D. From CULF

at U.C.U medical center complaining of same medical shoulder problem as I. This was approved by Defendant Burnham, Gardner Schipaanboord. Inmate Hermann (sic) told me this directly in the vehicle back from CUEF to U.S.P. Inmate DAVID Housholder in the same vehicle told me he had gotten surgery on his knees for an "Arthritic condition." Defendant Burnham also stated that prescriptions from U.S.P. (in amt, type, and duration) would not be honored at CUEF AND that the additional cost of re-prescription must be paid. Thus I paid for U.S.P. prescriptions not filled. Also Defendant Burnham started prescriptions of ACEPRAMINOPHEN 325 mg. Start 2/4/2002 stop 5/5/2002. ~~RECEIVED~~ I never got refills for such after the 3 February 2002. Yet I paid \$4<sup>00</sup> + \$50 for such diagnosis and prescription, and denial of surgery AGAIN. I filed grievance against Dr. Burnham in CUEF and was denied surgery on neck and shoulder. I was told by PA Fitzgerald in CUEF that he would contact U.S.P. for "committee review" of my surgery request. It never occurred. ON 4-11-02 I placed another HCR in regarding my "Continued chronic neck pain". Defendant Abbott saw me at OG II. He denied my medication that Dr. Burnham had prescribed and I already had paid for. He denied my request for surgery on neck and shoulder. He stated to me - Dale Schipaanboord has told me to tell you, you will not get surgery and if you don't like it you can file a grievance. "A grievance # 990845022 had already been filed on these denials and the continual pain despite my compliance with all directed medical care. The level II response from Carl Jacobson (the man who stated that "Hitler was a Jew" and I am a Jew) to submit yet another HCR (another \$3<sup>00</sup>) to meet with yet another medical practitioner - health care provider of U.S.P. who will do nothing to solve the problem once and for all. ON 8-2-02 I wrote to National Commission on Health Care. ON 8-30-02 I wrote to the State of Utah Medical Director. The State of Utah Medical Director did not respond. I met with Defendant Gardner. He stated that he would authorize surgery on neck and shoulder, but only after I first had X-rays and had physical therapy on shoulder to relax along with the neck, it took care of problems. X-rays were taken of neck. I attended all physical therapy with Jim Armstrong for the next several months. The pain relief was as usual only



## STATEMENT OF FACTS (cont.)

5 Medical Entry 2/3/03 in response to Yet Another HCR (8<sup>00</sup>)  
 - SHOULDER JOINT PAIN THE OVER CORACOID PROCESS IMPINGEMENT...  
 L SIDE COM CONTINUOUSLY WILL INJECT AGAIN" (emphasis added)  
 (At this injection a female nurse told me that she "thought I  
 cortizone injections lifetime were limit for safe health and  
 no damage to brain and liver"). On 2-24-03 pain returned  
 in full to both shoulders. Wrote Kite to PA Coombs - as directed.  
 No response. On 5-8-03 sent in Another Health Care Request  
 (8<sup>00</sup>) stating "my pain in both shoulders is intolerable, nightly, severe.  
 Disrupting sleep. Request MRI, x-rays and surgery to fix the  
 problem once and for all. Request C.R. p. test of blood  
 for cholesterol and heart attack probability.  
 Sent at OQ III on 5-13-03 by PA Coombs. Another PA in attendance.  
 (Coombs said I "changed my story as to pain in my shoulders" I said  
 "I did not." He said "You said it was an impingement problem." I said  
 "No, I said Dr. Garden said it was. Then you first agreed, now changed  
 your diagnosis". Coombs: "No, I didn't I said it was (some medical  
 term). I said "I am in pain. I have continuously been in pain."  
 Other PA: "Are you A pain or in pain?" (emphasis added) I said "I  
 Am a "pain" (quoted with fingers gesture) because I am in pain and no one  
 is stopping it." PA Coombs began reading off the computer: "Impingement  
 problem." I said "Like you said I had." (Why would he type it in as  
 such if he didn't agree with such?) I then stated: "I have done the  
 physical therapy I have taken the cortizone shots and the pain has  
 not gone away for good. I need the surgery." Defendant Coombs said "Well,  
 you won't be getting that." I asked "Why not?" Defendant Coombs: "Because  
 surgery will not solve the problem." I then stated "I am in pain every night,  
 and I've done all that you have asked." Defendant Coombs became very angry.  
 "Do you want this interview ended right now?" I said "No." Defendant Coombs:  
 "This is what I will do. I will put in for a U of W exam of the shoulder.  
 They will tell you the same thing I'm telling you. I know that they  
 will because I talk to them every week and I'll make sure of  
 it." Then he so.

Then he switched to the neck problem. I said "I am still in  
 pain, headaches" (Kuyler, Base, ting. of the ll pointed to), a shooting

PAIN! PA Coombs: "well, yes. It's degenerating." I said "well, I want it fixed." PA Coombs: "But nothing will stop degeneration. That's why it's a degenerative disk. Unless you had nerve compression. Then we could do something for you. I'll prescribe Ibutopren." Then he switched to my C.A.P. and cholesterol test.

Defendant Coombs: "You want a CRP test and cholesterol screening?" ME: "Yes". Defendant Coombs: "Where did you hear about CRP test?" ME: "On TV." Defendant Coombs: "Ahhh, TV, yes, well the C.A.P. test is only for those people who have a history and symptoms of heart attacks as a result of a plaque condition." ME: "Of a heart attack?" Coombs: "Yes". ME: "But wouldn't a test be a good precursor to see if a heart attack is imminent? (That's what The TV KSL News Broadcast said. NO history or symptoms. NOT NECESSARY.)"

Coombs: "NO". "Let's check your cholesterol on the computer. In 1999 and 2001, blood tests showed 198, 204... ohmm... well a big cholesterol meal because the test could show a high cholesterol result which only reflects the meal and then there are different types of good and bad cholesterol, HDL... "But I will put you in for blood test. NO FOOD AFTER 8 PM. NO COFFEE. WATER FINE. Blood test tomorrow I AM."

[Note: I complied fully with instructions and have never to date received test results nor medication despite several letters (letters) to Coombs and med Dept, Defendant Coombs. Finally, Coombs looked at my right ankle, Coombs: "When did you sprain ankle? Where's pain at?" ME: "Over a week ago, 10 days." (I pointed to it. Right here." Coombs: "How did it happen?" ME: "Basketball. I fell on a guys foot, rolled it over." Coombs: (Taking my foot in his hand does several movements. Some are painful for me and I tell him so.) Coombs: "Well, one week is nothing. Most ankles it's 2-3 weeks. Some 4-6 weeks depending on where sprain at. Will do x-rays but I don't think it will show anything."

X-Rays taken on 5-14-03. Nothing told me until 5-19-03 when I was sent to Germany At night. 2 Broken Fractures in Foot. Bloodie Foot. Hexi Cast placed on right foot for 30 days. (Emphasis added)

It is apparent that Defendant Coombs chose to disregard what I was stating on a purely personal basis, and his diagnosis was based on such personal conflict and not professional judgment. A blood pressure check was also taken but I was not permitted to know what it read, nor to date do I know.

Defendant Combs then asked "Are you going to take the injections?" I said "they don't solve the problem" He asked again "Are you going to take the injections or are you refusing?" I said "I am not going to be getting injected with something that only lasts for a few weeks." He asked again "Are you refusing? I will lit it as a refusal." I said ~~again~~ "I will have to see if the Court agrees with you on this."

At this P.A. Combs said the "appointment" was over. He asked me if it would be okay if they MRI'd my shoulder. I said "sure, and why not the left too since it's more painful?"

P.A. Combs said "No, there is no cause to MRI ~~left~~ left one." ~~Then~~ (Note: I requested MRI of shoulder over a year ago.)

Thomas Hermann and other inmates named in this litigation were under 60 years of age and had similar shoulder problems and did receive surgery. IS MY PAIN ANY LESS IMPORTANT AS THEIRS?

~~Other~~ ~~State~~ ~~Prison~~ Inmates known to me whom I've personally discussed their medical problems who received surgery were: Thomas Hermann (Shoulder), John Mooney (elbow), ~~Shane Strong~~ <sup>Shane Strong</sup> (Shoulder), Ray Turbow (Neck), Michael Calvert (Neck, shoulder), David Hirschfelder (Knees), Tim Valdez (Knees), Maurice Lee (Knee)

All were similarly situated to me, in the same housing unit. None of these surgeries were life-threatening.

All had <sup>either</sup> Arthritic conditions, degic problems, shoulder movement pain.

All are not Jewish, are litigators. Inmate Calvert is a Vietnam Veteran and was permitted to go to VA Hospital, which I have been continually denied, as a Veteran by the Defendants.

~~Reasons~~ 30 The reasons for my denial of surgery on my neck and shoulder to relieve pain once and for all ARE: "I'm not John Glum" And "I don't have a \$50,000 dollar arm, I am too young." "Budget" won't permit it, "we're not going to give you surgery" "not a life-threatening situation." "I just came down here from Napier" "Can't find a surgeon to do the surgery."

NOTE: P.A. ~~who~~ ~~who~~ deferred surgery was shortly let go / resigned therefore and told he became he went "it was because he was told he was too concerned about inmate's medical problems" And "that it was costing the prison too much money." Defendant Gaden initially okay surgery after other options exhausted, and now has apparently changed his mind.

The policy of U.S.P. is that prisoners similarly situated to myself are able to get free medical care while indigent at U.S.P., and if they do not return to prison I must pay for my medical care.

The policy of "chronic" illness, injury was permitted under medical fees to other <sup>similarly situated</sup> prisoners at U.S.P. but not to me even though I had a deemed "chronic" medical problem.

The continual charges for follow-up visits as directed by defendant Coombs is not in accordance with policy.

Overcharges for prescriptions not filled, or refilled as noted caused loss of money from me for services and medications not rendered.

Other similarly situated prisoners at U.S.P. who were in pain for similar ailments as I received surgery on such areas while I have been continually denied. The denials of such surgery have been made on capricious, unintentional grounds by Defendant who have acted in a deliberate and wanton desire to avoid solving the problem, permanent <sup>elimination of</sup> pain, continued payment for medical treatment that has only temporarily stopped pain, egregious retaliatory conduct in denying me such permanent solutions while permitting other non-litigious inmates such permanent solutions, and Defendant Coombs and Steadman conspiring to deliberately deny surgical cure. As of this date still no MRI for right shoulder. "Tut" as right shoulder not seen in previous X-rays.

As of 6-13-03 taken to University of Utah Medical Center for MRI on right shoulder. After 15-20 minutes using MRI machine nurse pulled me out said "You're (me) too big. Pictures didn't come out. They'll have to find another way to test."

On October 7-7-03, I was taken to OPEN FARMING Co. for MRI on right shoulder. Results at this date, unknown. I was made aware that inmate MELVIN SMITH also had shoulder problem/pain and was on steroids were ineffective, and that he was being taken to U of U medical center for surgery on shoulder. On 7-28-03 sent to Infirmary J.P. waited 10 minutes, after defendant Coombs started discussing my case with Defendant Carey, U of U doctor and then he shut the door. He had held telemed conference. Defendant Carey first said I had "MRI on left shoulder." It was right shoulder. I asked about "tut" on right shoulder? Defendant Carey said there "was no test." I said "Yes, there was." "No test" and



"No, it was a lesion." Then the Defendant Carey asked where the pain was; when I had MRI etc.? I showed her Area of pain and explained that whenever I rolled on my side at night during sleep, pain would be intense in the shoulder Area. She said that I "was too young for surgery now." [Note: MELVIN SMITH, inmate previously referred to is younger than I and received surgery on shoulder.] I then asked "Wouldn't surgery take away pain from shoulder?" She said "Not necessarily." She asked if I had ever had an injury to right shoulder? I said "No". I asked what her name was. She said "Virginia Carey". I asked "Are you a doctor?" She said "Yes". I asked "At the UO?" She said "Yes". I asked if she knew a Dr. Robert Burke? She said "Yes I work with him." I asked if she knew that he had a surgical procedure with which stopped pain in Arthritic Areas such as shoulders, neck, knees etc.? She said "Yes". She then recommended physical therapy. (I've already had such). Defendant Coombes ended telephoned conference.

ON 8-5-03 I was sent again to Infirmary at U.S.P. I spoke with Jim Armstrong, physical therapist, reviewed MRI. He said that I had a "cyst" on right shoulder cuff. He also stated that the doctors thought cyst "was benign". He also stated that I would begin to do exercise my rotator cuff and my right shoulder could get a weight pain to alleviate pain and strengthen cuff.

On 9-22-03 inmate Joseph Perry # 18740 told me that the prison had authorized surgery on his left shoulder for pain that was carrying there. Inmate Joseph Perry # 18740 is 42 years old.

ON or about October 17, 2003 U.S.P. inmate Jon Chadwick # 21239 told me he had received surgery on his shoulder as an inmate at Utah State Prison in 2001. That said surgery was authorized by the Utah State Prison Medical Dept staff. He was 34 years old at the time.

On November 17, 2003 U.S.P. inmate Terrence Pierce # 22077 told me he was authorized on November 17, 2003 to receive surgery on his finger which was dislocated in a touch football game in the U.S.P. yard of the Utah State Prison. Inmate Terrence Pierce # 22077 is 40 years of age.

On or about February 17, 2004 inmate Clifford Smith # 19523 received surgery on his left hand. He had

worked at any rept - nation or other jobs - which would have caused said condition, I make - you is approximately 32 years of age. He has a "White Bricks" tattoo on his arm, signifying Bryan Gary Affiliation (White Bricks). In April 2004 inmate Dan [unclear] received surgery on his spine. In August 2004 per instruction from staff, I was freed by defendants [unclear] and [unclear] denied my pain in shoulders neck and my arm; he would do for me,

Abbott  
taken

c. (1) Count III: 14th Amendment to U.S. Constitution  
Art I Sec 1, 3, 7 of Utah State Constitution

(2) Supporting Facts: (please see attached paper and documents)

In August 2004 X-rays were taken of both  
shoulders but not neck As Defendant Abbott  
had ordered. X-rays revealed per Dr. Noble (X-ray  
technician) "A growth on my left shoulder"  
with

#### D. INJURY

- How have you been injured by the actions of the defendant(s)?  
 1. I have suffered continually, nightly pain in my left shoulder for  
over A 2 year period of time. I have suffered continually, nightly pain in  
my right shoulder for over A years period of time. I have suffered  
continual daily pain in my neck for over A 3+ year period of time.  
I have lost sleep nightly because of pain, which wakes me up.  
I have had continual headaches At (temples sides Base) of skull  
for over 3+ years. I have been refused corrective surgery on the  
neck after it was initially okayed which would have stopped the  
pain and headaches. I have been treated differently than similarly situated  
inmates with same Area problems who did receive surgery  
I have been injected with cortisone shots which ~~can~~ cause brain and  
liver damage. I have been denied benefits due me As A US Veteran.  
monetary payment of \$4.00 each time physician denied surgery and ~~despite~~ contrary  
to other inmates who did not have to pay for their medical care.

#### E. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

- Have you filed other lawsuits in state or federal court that deal with the same facts that are involved in this action or otherwise relate to the conditions of your imprisonment? YES X  
 \_\_\_ / NO X. If your answer is "YES," describe each lawsuit. (If there is more than one lawsuit, describe additional lawsuits on additional separate pages, using the same outline.)

a. Parties to previous lawsuit:



- Plaintiff(s): \_\_\_\_\_
- Defendant(s): \_\_\_\_\_
- b. Name of court and case or docket number: \_\_\_\_\_
- c. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?) \_\_\_\_\_
- d. Issues raised: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- e. When did you file the lawsuit? \_\_\_\_\_
- Date      Month      Year
- f. When was it (will it be) decided? \_\_\_\_\_
2. Have you previously sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part C? YES ☒ NO ☐. If your answer is "YES" briefly describe how relief was sought and the results. If your answer is "NO" explain why administrative relief was not sought.
- Exhausted all 3 levels, 3 separate times  
in last 3 years. Same issues. Administrative remedies  
not granted. #
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

#### F. REQUEST FOR RELIEF

1. I believe that I am entitled to the following relief:

1. DECLARATORY RELIEF THAT DEFENDANTS VIOLATED MY  
Constitutional Right and Protection, and that non-payment of medical (fee) by parole prisoners who do not  
return to prison as directed.

2. TRIAL BY JURY.

3. THAT DISCOVERY BE ORDERED.

4. INJUNCTIVE RELIEF INCLUDING BUT NOT LIMITED TO: MRI of my  
Shoulder, Neck and Skull CATSCAN BY REPUTED VETERAN'S  
ADMINISTRATOR / NORTON DOCTOR (S)  
13-

3. <sup>complaint</sup> ~~complaint~~ <sup>should be included in note, should (or) to stop PAM</sup>  
4. <sup>And for each</sup> ~~And for each~~ <sup>20,000 for PAM</sup> ~~20,000 for PAM~~ <sup>needless suffering</sup>  
5. <sup>Compensation</sup> ~~Compensation~~ <sup>damages of 20,000 per each</sup> ~~damages of 20,000 per each~~ <sup>don't know guilty/responsible</sup>  
6. <sup>Positive Damages</sup> ~~Positive Damages~~ <sup>of at least \$50,000 for egregious, wanton disregard for plaintiffs</sup> ~~of at least \$50,000 for egregious, wanton disregard for plaintiffs~~  
7. <sup>Any other relief</sup> ~~Any other relief~~ <sup>deemed proper by this Court</sup> ~~deemed proper by this Court <sup>from each defendant</sup>  
8. <sup>All filing fees + costs, including appeals, if any, be paid by defendants</sup> ~~All filing fees + costs, including appeals, if any, be paid by defendants~~  
9. <sup>10.</sup> ~~10.~~~~

### DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the plaintiff in the above action, that he/she has read the above complaint, and that the information contained therein is true and correct. 28 U.S.C. §1746; 18 U.S.C. §1621.

Executed at Utah State Prison on April 5 2003  
(Location) (Date)

Signature

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